

Message Text

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ACTION EUR-12

INFO OCT-01 NEA-10 ISO-00 EURE-00 SY-05 MCT-01 SSO-00
NSCE-00 INRE-00 USIE-00 CIAE-00 DODE-00 PM-04 H-01
INR-07 L-03 NSAE-00 NSC-05 PA-01 PRS-01 SP-02 SS-15
JUSE-00 IO-13 /081 W
-----121951Z 020989 /41

O R 121911Z JAN 77
FM AMEMBASSY BONN
TO SECSTATE WASHDC IMMEDIATE 4653
INFO AMEMBASSY BERLIN
AMEMBASSY BRUSSELS
AMEMBASSY DUBLIN
AMEMBASSY LONDON
AMEMBASSY LUXEMBOURG
AMEMBASSY PARIS
AMEMBASSY TEL AVIV
AMEMBASSY THE HAGUE
USMISSION NATO BRUSSELS
USMISSION USBERLIN
AMCONSUL MUNICH

C O N F I D E N T I A L SECTION 01 OF 02 BONN 00652

E.O. 11652: GDS
TAGS: PFOR, PINS, PORS, FR, IS, GW
SUBJECT: GERMAN FOLLOW-UP ON THE ABU DAOUD EXTRADITION
REQUEST

REF: BONN 0648

SUMMARY: FURTHER INFORMATION RECEIVED FROM GERMAN
OFFICIALS HERE CONFIRMS OUR EARLIER IMPRESSION THAT THE
FRG WAS PROCEEDING AT WHAT IT FELT WAS AN APPROPRIATE
PACE IN ORDER TO COMPLETE THE LEGAL STEPS FOR THE
EXTRADITION OF ABU DAOUD FROM FRANCE. END SUMMARY.

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1. ACCORDING TO THE OFFICIAL OF THE BUNDESKRIMINALAMT
(BKA - FEDERAL CRIMINAL POLICE) WHO HANDLES THE CASE,
FOLLOWING IS THE PRECISE CHRONOLOGY OF EVENTS:

A. ABU DAOUD WAS ARRESTED BY THE FRENCH BEFORE
THERE WAS ANY DISCUSSION ABOUT HIM WITH THE GERMANS.

B. THE FIRST NOTIFICATION ON 7 JAN FROM THE FRENCH INFORMED GERMANS OF ARREST AND ASKED IF THERE WAS A GERMAN WARRANT OUTSTANDING FOR HIS ARREST. IT ALSO SAID THAT HE WOULD HAVE TO BE RELEASED IF NOTIFICATION OF THE EXISTENCE OF A GERMAN WARRANT WAS NOT RECEIVED BY 2200 HOURS ON 7 JANUARY.

C. THE GERMANS (VIA INTERPOL) INFORMED FRENCH THAT NO WARRANT WAS OUTSTANDING, BUT THAT THEY WOULD TRY TO GET ONE SOONEST. THE FRENCH APPROVED A DELAY IN THE SUSPENSE DATE FOR GETTING NOTIFICATION UNTIL SOMETIME ON 8 JANUARY. (THE REASON NO WARRANT WAS OUTSTANDING IS THAT ABU DAOUD'S NAME HAD BEEN REMOVED WHEN HE WAS IN PRISON UNDER DEATH SENTENCE IN AMMAN. AFTER HIS RELEASE NO ONE HAD RENEWED THE ARREST WARRANT.)

D. SEVERAL OFFICIALS OF THE BKA WORKED WITH BAVARIANS ALL NIGHT 7/8 JANUARY. AT 0800 THE WARRANT OF THE MUNICH COURT WAS TRANSMITTED BY TELEX TO PARIS. THE NOTIFICATION INCLUDED A REQUEST FOR ABU DAOUD'S PROVISIONAL ARREST FOR EXTRADITION. THIS IS THE "ERSUCHEN JEMANDEN IN VORLAEUFIGER AUSLIEFERUNGSHAFT ZU NEHMEN" AND IS STANDARD PROCEDURE. IT CAN BE REQUESTED BY A STAATSANWALT FOLLOWING THE ISSUANCE OF AN ARREST WARRANT.

E. THE FRENCH ARE BOUND BY THE FRENCH/GERMAN AUSLIEFERUNGSVERTRAG OF NOVEMBER
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29, 1951, TO RETAIN A SUSPECT FOR 20 DAYS FOLLOWING CUSTODY OF PERSON SOUGHT ON BASIS OF PROVISIONAL ARREST REQUEST. THIS IS PROPER PROCEDURE FOR HOLDING A SUSPECT AND THE GERMANS BY TERMS OF THE 1951 TREATY HAVE 20 DAYS TO SUBMIT A FORMAL EXTRADITION REQUEST.

F. AT NO TIME PRIOR TO ABU DAOUD'S RELEASE DID THE FRENCH PRESSURE THE GERMANS TO SUBMIT AN EXTRADITION REQUEST.

G. CERTAIN ASPECTS OF THE FRENCH COURT PROCEEDINGS WERE UNUSUAL. NO ONE FROM FRG EMBASSY WAS ASKED TO ATTEND. THE COURT HAD NOT PROVIDED THE OPPORTUNITY FOR GERMAN WITNESSES TO CONFIRM THAT THE MAN SOUGHT IN BAVARIA WAS THE SAME ONE HELD BY FRENCH AUTHORITIES. SUCH WITNESSES COULD EASILY HAVE BEEN PRODUCED.

H. IN THE OPINION OF THE BKA, THE FRENCH

MADE A POLITICAL DECISION TO RELEASE ABU DAOUD, THEN
HELD THE COURT HEARING TO GIVE THE RELEASE THE VENEER
OF LEGALITY. IF ANYONE SHOULD COMPLAIN, IT SHOULD
BE THE GERMAN GOVERNMENT BECAUSE THE FRENCH GOVERNMENT
HAD VIOLATED THE SPECIFIC TERMS OF THE APPLICABLE

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C O N F I D E N T I A L SECTION 02 OF 02 BONN 00652

EXTRADITION TREATY AND NORMAL PRACTICE UNDER THAT
TREATY.

2. IN ADDITION, A GERMAN JUSTICE MINISTRY OFFICIAL
HAS INFORMED EMBASSY OF FOLLOWING POINTS:

A. THE FRENCH HAD INFORMED THE FRG EMBASSY THAT
IT WAS NOT NORMAL PRACTICE FOR A FRENCH COURT TO
GIVE JUSTIFICATION FOR A DECISION SUCH AS THAT RESULTING

IN DAOUD'S RELEASE.

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B. THE FRENCH/FRG EXTRADITION TREATY PROVIDES THAT THE ARREST OF A SUSPECT ON BASIS OF AN INTERPOL LISTING OR CABLE REQUEST REQUIRES CONFIRMATION THROUGH THE DIPLOMATIC CHANNEL TO BECOME A FULL PROVISIONAL ARREST REQUEST IN THE FORMAL SENSE. FRENCH HAD BASED RELEASE ON ABSENCE OF SUCH DIPLOMATIC CONFIRMATION BY THIRD DAY. THE JUSTICE MINISTRY HAS REVIEWED HANDLING OF ALL FRG REQUESTS FOR EXTRADITION FROM FRANCE SINCE 1973 AND HAS FOUND THAT, ON THE AVERAGE, 17 DAYS PASSED BETWEEN ARREST ON THE BASIS OF A CABLED REQUEST AND FRG DIPLOMATIC CONFIRMATION OF THE FRG GOVERNMENT WISH FOR PROVISIONAL ARREST FOR EXTRADITION, AND THAT NOTICE THIS LATE HAD SUFFICED.

C. ON JANUARY 7 AND 8, THERE HAD BEEN DIRECT CONSULTATIONS BETWEEN FRENCH MFA AND THE FRG FONOFF, INTERIOR AND JUSTICE MINISTRIES AT THE MINISTER LEVEL WHICH MUST HAVE MADE CLEAR THAT THE PROVISIONAL ARREST REQUEST WAS OFFICIAL AND FULLY SUPPORTED BY THE FRG GOVERNMENT. THE OFFICIAL STATED THAT, IN REVERSED CIRCUMSTANCES, WHEN THE FRENCH REQUEST PROVISIONAL ARREST IN THE FRG, THE FRENCH NEVER CONFIRM THE PROVISIONAL ARREST REQUEST THROUGH DIPLOMATIC CHANNELS. AFTER FRG AUTHORITIES INFORM THE FRENCH THAT A PROVISIONAL ARREST HAS BEEN EFFECTED, THE NEXT THING THEY RECEIVE IS THE FORMAL FRENCH EXTRADITION REQUEST WITH SUPPORTING DOCUMENTS THROUGH NORMAL DIPLOMATIC CHANNELS.

D. THE FRG CABINET HAD BEFORE IT AT TODAY'S MEETING A DRAFT OF NOTE TO FRENCH GOVERNMENT EXPRESSING REGRET AT DAOUD'S RELEASE, NOT ACCEPTING FRENCH ATTEMPT LEGALLY TO JUSTIFY DAOUD'S RELEASE VIS-A-VIS FRG, AND REQUESTING THAT FRENCH AUTHORITIES TAKE STEPS TO REGAIN CUSTODY OF DAOUD FOR EXTRADITION TO FRG. CABINET HAD DECIDED AGAINST DELIVERY OF SUCH NOTE.
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THE OFFICIAL DID NOT KNOW WHAT OTHER LESS FORMAL STEPS MIGHT HAVE BEEN AGREED AT THE MEETING.

E. FINALLY, THE OFFICIAL STATED THAT ARTICLE 10

OF THE FRG/FRENCH EXTRADITION TREATY PROVIDED AS THE
ONLY BASIS FOR RELEASE OF A PERSON HELD ON THE BASIS
OF PROVISIONAL ARREST THAT THE REQUESTING STATE FAILS
TO MAKE THE FORMAL REQUEST FOR EXTRADITION SUPPORTED
BY NECESSARY EXTRADITION DOCUMENTS WITHIN 20 DAYS.
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